

IN THE SENATE

SENATE BILL NO. 1111

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE CONDOMINIUM PROPERTY ACT; AMENDING SECTION 55-1505, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ALLOCATION OF PERCENTAGE OF OWNERSHIP INTEREST IN A COMMON AREA AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 55-1505, Idaho Code, be, and the same is hereby amended to read as follows:

55-1505. CONTENTS OF DECLARATION. (1) The declaration shall contain the following:

(a) A legal description of the surface of the ground within the project.

(b) A legal description of each unit in the project, which description may consist of the identifying number, symbol or name of such unit as shown on the plat.

(c) The percentage of ownership interest in the common area which is to be allocated to each unit for purposes of tax assessment under section 55-1514, Idaho Code, and for purposes of liability as provided by section 55-1515, Idaho Code. Such percentage shall be fixed either by taking as a basis the value of each unit in relation to the value of the property as a whole or by taking as a basis the square footage of the interior floor area of each unit in relation to the square footage of the interior floor area of all the units as a whole. For said purposes, the percentage so fixed shall be conclusive, subject only to clear and convincing proof of bad faith at the time of and in the making of such allocation or the last prior amendment thereof. If a substantial change is made to the value or size, depending upon the method used for allocation, of one (1) or more units as compared with other units, upon petition by a unit owner for reevaluation and allocation of percentage of ownership interest, the allocation shall be amended. Reallocation shall not occur more frequently than every ~~three~~ five (35) years and, if square footage is used in determining the percentage of ownership interest, only if a substantial change is made to the size of at least one (1) unit. If the board of managers fails to act, reallocation may be accomplished by court action. If court action is necessary the prevailing party may be awarded attorney's fees and costs for unreasonable pursuit or refusal.

(2) The declaration may but need not also contain any of the following:

(a) A description of the buildings in the project, stating the number of stories and basements, the number of units and the principal materials of which they are or are to be constructed.

(b) A statement of the location of each unit, its approximate area, number of rooms, and immediate common area to which it has access, and any other data for its proper identification.

- 1 (c) A description of the common areas and facilities.
2 (d) A description of any limited common areas and facilities, if any,
3 stating to which units their use is reserved or the terms of applicable
4 restrictions or limitations.
5 (e) The value of the property and of each unit.
6 (f) A statement of the purposes for which the building and each of the
7 units are intended and restricted as to use.
8 (g) Provisions as to the percentage of votes by the condominium owners
9 which shall be determinative of whether to rebuild, repair, restore, or
10 sell the property in the event of damage, taking, or destruction of all
11 or part of the property.
12 (h) Any or all of the provisions hereinafter referred to in section
13 55-1507, Idaho Code, as proper provisions of bylaws.
14 (i) Provisions for the management of the project by any management body
15 or bodies; for the voting majorities, quorums, notices, meeting dates,
16 and other rules governing such body or bodies; and for recordation, from
17 time to time, as provided for in the declaration, of certificates of
18 identity of the persons then composing such management body or bodies,
19 which certificates shall be conclusive evidence of the facts recited
20 therein in favor of any person relying thereon in good faith.
21 (j) As to any management body:
22 (1) For the powers thereof, including power to enforce the provi-
23 sions of the declaration;
24 (2) For maintenance by it of fire, casualty, liability, worker's
25 compensation and other insurance and for bonding of the members of
26 any management body;
27 (3) For provision by it of and payment by it for maintenance, util-
28 ity, gardening and other services; for employment of personnel
29 necessary for operation of the project, and legal and accounting
30 services;
31 (4) For purchase by it of materials, supplies and the like and for
32 maintenance and repair of the project;
33 (5) For payment by it of taxes and special assessments which would
34 be a lien upon the entire project or common areas, and for dis-
35 charge by it of any lien or encumbrance levies against the entire
36 project or common areas;
37 (6) For payment by it for reconstruction of any portion or por-
38 tions of the project damaged, taken or destroyed;
39 (7) For delegation by it of its powers;
40 (8) For entry by it or its agents into any unit when necessary in
41 connection with any maintenance or construction for which the man-
42 agement body is responsible;
43 (9) For an irrevocable power of attorney to the management body
44 to sell and convey the entire project for the benefit of all of the
45 owners thereof when partition of the project may be had under sec-
46 tion 55-1511, Idaho Code, which power shall: (i) be binding upon
47 all of the owners, whether they expressly assume the obligations
48 of the declaration or not; (ii) if so provided in the declaration,
49 be exercisable by less than all, ~~but not less than fifty percent~~
50 (50%)+, of the voting power of the owners in the project; (iii)

be exercisable only after recordation of a certificate by those who have the right to exercise such power of attorney that such power of attorney is properly exercisable under the declaration, which certificate shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith.

(k) Provisions for amendments of such declaration or the bylaws, if any, which amendments, if made upon the vote or consent of more than fifty percent (50%) of the voting power of the owners in the project, shall be binding upon every owner and every condominium whether the burdens thereon are increased or decreased thereby, and whether or not the owner of each and every condominium consents thereto.

(l) Provisions for independent audit of the accounts of any management body.

(m) (1) Provisions for assessments to meet authorized expenditures of any management body, and for a method for notice and levy thereof, each condominium to be assessed separately for its share of such expenses in proportion, ~~unless otherwise provided~~, to its owner's fractional interest in the common areas;

(2) For the subordination of the liens securing such assessments to other liens either generally or specifically described.

(n) Provisions for the conditions upon which partition of the project may be had pursuant to this act. Such right to partition may be conditioned upon failure of the condominium owners to elect to rebuild within a certain period, specified inadequacy of insurance proceeds, specified damage to the building, a decision of an arbitrator, or upon any other condition.

(o) Provisions for restrictions upon the severability of the component interests in the property which comprise a condominium. Such restrictions shall not be deemed conditions repugnant to the interest created nor unlawful restraints on alienation.

(p) Such document, agreement or writing pertinent to the project or its financing as may be attached to, incorporated in or made an exhibit to the declaration and/or any bylaws.

(q) Such other provisions not inconsistent with this act as the owner or owners may deem desirable in order to promote, facilitate or preserve the property or the project or the use, development or administration thereof.

(3) ~~Subpart~~ Subsection (2) of this section shall not be construed as a limitation upon permissible contents and provisions of a declaration.